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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

NATHAN DANIEL, Plaintiff and Respondent, v. CRAIG S. LATHEN, Defendant and Appellant.	B221584 (Los Angeles County Super. Ct. No. BC337962)

APPEAL from a judgment of the Superior Court of Los Angeles County. Amy Hogue, Judge. Affirmed.

B. Kwaku Duren & Associates and B. Kwaku Duren for Defendant and Appellant.

Law Offices of Joseph W. Singleton and Joseph W. Singleton for Plaintiff and Respondent.

This case, which arises out of a dispute between next door neighbors, is before us for a second time. Previously, in *Daniel v. Lathen* (June 30, 2009, B203799) [nonpub. opn.], we reversed the trial court's order vacating a default judgment entered in favor of plaintiff and respondent Nathan Daniel (Daniel) and against defendant and appellant Craig S. Lathen (Lathen). We remanded the matter with directions that the trial court (1) allow Daniel to request the default judgment to be reinstated in a reduced amount and (2) reconsider its order setting aside a sheriff's sale of the Lathens' residence that was based on the original default judgment. Lathen now appeals from (1) the default judgment in the reduced amount entered on November 16, 2009 (the default judgment); and (2) the order finding good cause to order judgment to stand (the December 4 order).[1]

Lathen contends: (1) the trial court erred in failing to reconsider all aspects of the sheriff's sale; (2) the trial court erred in failing to order Daniel to return to Lathen both a $75,000 homestead exemption check and the difference between the proceeds of the sheriff's sale and the reduced amount of the default judgment; (3) our prior opinion constitutes a legally sufficient basis for setting aside the sheriff's sale; and (4) an unlawful detainer order in a related case should be stayed in the interest of justice. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

We briefly summarize the facts of the underlying dispute, which are detailed in our prior opinion. Daniel initiated this action in September 2005, after the Lathens responded to Daniel's complaint about their barking dogs with verbal threats invoking Daniel's race and religion. Daniel's second cause of action alleged the Lathens violated Civil Code sections 51.7 (freedom from violence or intimidation), 52 (damages for denial of civil rights), and 52.1 (civil action for denial of civil rights). As to the second cause of

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[1] Brenda Lathen was also a defendant, but she does not appeal. In our summary of facts, we refer to the two defendants collectively as the Lathens.

action, the prayer for relief sought compensatory damages of $100,000, statutory damages of $300,000 and punitive damages in an amount to be shown at trial.[2]

The Lathens failed to respond to the complaint and their default was entered on November 23, 2005. Following a default prove-up hearing on January 20, 2006, the trial court entered a default judgment in the amount of $407,423.58, comprised of: $7,423.58 (special damages); $80,000 (general damages); and $320,000 (punitive damages).[3] On May 16, 2007, the trial court granted Daniel's application for an order to sell the Lathens' home to enforce the money judgment. (See Code Civ. Proc., § 701.510.)[4] At the sheriff's sale, which took place on July 25, 2007, Daniel purchased the property for $562,500. He filed a Satisfaction of Judgment and the Lathens received their $75,000 for the statutory homestead exemption. (See § 704.730, subd. (a)(1).)

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[2] Subsequent to the filing of the original action, the parties have filed several other lawsuits, which the trial court deemed related to the present action. These cases include:

- BC375880 The Lathens filed case No. BC375880 to set aside the default judgment entered against them in this case. The parties stipulated to consolidating case No. BC375880 with this case. After the trial court vacated the default judgment in this case, the Lathens dismissed with prejudice case No. BC375880.

- BC391091 While the prior appeal in this case was pending, the Lathens filed case No. BC391091, a quiet title action, which was deemed related to this case by the trial court on remand. After the default judgment in this case was reinstated, settlement negotiations in case No. BC391091 failed. In July 2010, the trial court granted Daniel judgment on the pleadings and dismissed the complaint in case No. BC391091. Notice of appeal was filed on July 14, 2010; but that appeal was dismissed and remittitur issued on December 16, 2010.

- 10-U-06173 On May 13, 2010, Daniel filed case No. 10-U-06173, an unlawful detainer action against the Lathens. The trial court deemed case No. 10-U-06173 related to case No. BC391091, the quiet title action in which Daniel obtained judgment on the pleadings. In this appeal, Lathen contends this unlawful detainer should have been stayed.

[3] The trial court did not award the "statutory" damages prayed for in the complaint.

[4] All future undesignated statutory references are to the Code of Civil Procedure.

On August 28, 2007, the Lathens filed a motion to vacate the default judgment on various grounds including that no statement of damages was filed or personally served on the Lathens prior to entry of default as required by section 425.11, subdivision (c) and section 580. On September 14, 2007, the trial court vacated the default judgment for noncompliance with sections 425.11, subdivision (c) and 580.

On September 18, 2007, the Lathens filed a motion to set aside the sheriff's sale on the basis that the default judgment had been vacated. On October 31, 2007, Daniel quitclaimed his interest in the property to The Justice League Living Trust. In November 2007, the trial court granted the Lathens' motion to set aside the sheriff's sale. The Lathens returned to Daniel the $75,000 check for the homestead exemption, but would endorse the check only on the condition that Daniel withdrew all liens on the property. Daniel appealed from the orders vacating the default judgment and setting aside the sheriff's sale.

In our prior opinion, filed on June 30, 2009, we held that Daniel's failure to serve a statement of damages did not preclude default judgment in his favor, but did limit the amount of damages he could recover to that specified in his complaint: $100,000 in actual damages and $300,000 in statutory damages. Punitive damages were not available because Daniel did not give advance notice of the amount of punitive damages he was seeking. We concluded that the proper remedy was to give Daniel the option of (1) accepting a reduced default judgment in the amount that was specified in his complaint, the $87,423.58 in combined general and special damages, plus costs, or (2) withdrawing his request for default judgment, in which case the default would be set aside and the Lathens would be entitled to file an answer. As to Daniel's appeal from the order setting aside the sheriff's sale, we concluded that the trial court should "have an opportunity, in the first instance, to reconsider all aspects of the appropriateness of the sheriff's sale in light of our holding that the proper remedy is not to vacate the judgment unconditionally, but to modify it to $87,423.58, plus costs."

The trial court held a case management conference on September 1, 2009, at which it set a hearing date of October 20, 2009, for an Order to Show Cause (OSC) as to

why judgment should not be entered pursuant to the prior opinion. Daniel was represented by counsel; neither the Lathens nor their counsel appeared at the hearing. Daniel elected to take the reduced judgment and the trial court ordered Daniel to submit a proposed judgment and serve it on the Lathens. Daniel's counsel and the trial court discussed the interrelationship between the separate quiet title action filed by the Lathens (case No. BC391091) and the November 2007 order setting aside the sheriff's sale, which we directed the trial court to reconsider upon remand. The trial court ordered the two cases deemed related. It ordered the Lathens to file any opposition to the OSC regarding entry of judgment by November 10, 2009, and Daniel to file any response thereto by November 17, 2009, so that the matter would be ready to decide at an OSC set for December 4, 2009.

As directed, Daniel filed and served a proposed judgment which recited the procedural history of this case and: (1) ordered the default judgment entered on February 28, 2006, reinstated in the reduced amount of $87,423.58, plus costs; (2) declared all pleadings filed by the Lathens after default was entered, other than the motion for relief from default, to be "a nullity and have no legal effect;" (3) declared all orders made by the trial court on motions brought by the Lathens after their default was entered to be "a nullity and have no legal effect;" (4) "reversed" the order setting aside the sheriff's sale; and (5) ordered Daniel to file a Satisfaction of Judgment.[5]

On November 9, 2009, the Lathens filed an opposition to the proposed judgment, the gist of which was that the proposed judgment did not address the related quiet title action (case No. BC391091) and did not comply with the prior opinion's direction to

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[5] Lathen asserts the judgment is ambiguous because, as submitted by Daniel's counsel, the judgment appears to contain "hash marks" to allow the trial court to check off which portions of the proposed judgment it was entering. None of the hash marks is initialed or otherwise marked. Whether or not this was intended to provide alternative forms of judgment is beside the point, for we assume the entire judgment was entered by the trial court. We observe that some of the language in the judgment (e.g., declaring certain documents "a nullity" and "reversing" a prior order) is not appropriate for inclusion in a judgment. If this language belongs anywhere, it would be in a separate order. (7 Witkin, Cal. Procedure (5th ed. 2008) Judgment, § 8, p. 552.)

reconsider all aspects of the sheriff's sale. The trial court signed the proposed judgment on November 16, 2009. The same day the judgment was filed, Daniel filed a response to the Lathens' opposition in which he argued that the Lathens did not have standing to challenge the sheriff's sale because they were in default and, in any case, setting aside the sale was not a proper remedy where the underlying judgment has been modified. (§ 701.680, subd. (b).) To the extent that the purchase price of the property exceeded the money judgment, the trial court explained at the hearing that the Lathens' remedy was to file a new law suit to recover the difference, as well as to recover the homestead exemption. In a minute order dated December 4, 2009, the trial court stated: "Court finds good cause to order judgment to stand. O.S.C. re dismissal/entry of judgment is discharged and off calendar."

Lathen filed a timely notice of appeal from the November 16 judgment and the December 4 order.

DISCUSSION

A. The Trial Court Correctly Reconsidered the Sheriff's Sale

Lathen contends the trial court erred in not reinstating the order to set aside the sheriff's sale. He argues the trial court failed "to reconsider all aspects of the appropriateness of the sheriff's sale as directed by the Court of Appeal's previous opinion in this matter." As we understand his argument, it is that the trial court's ruling was based on an erroneous belief that the Lathens' default deprived the trial court of jurisdiction to entertain their request to reinstate the order. We start our analysis with the familiar rule that an appellate court reviews a trial court's order not the reasons it gives. (*City of Morgan Hill v. Bay Area Quality Management Dist.* (2004) 118 Cal.App.4th 861, 870.) The issue for us is whether the trial court correctly vacated the earlier motion to set aside the sheriff's sale. We conclude the trial court's ruling was correct.[6]

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[6] The trial court's oral statements about constraints on its power were undoubtedly founded on the rule that a defaulting defendant does not have the right to take affirmative

A judgment debtor's remedies as to property sold at an execution sale are limited by statute, which treats the sale of the property differently than the proceeds of that sale. (*Arrow Sand & Gravel, Inc. v. Superior Court* (1985) 38 Cal.3d 884, 890 (*Arrow Sand*).) Generally, a sale of real property to enforce a money judgment is absolute and may not be set aside for any reason, including reversal of the underlying judgment. (§ 701.680, subd. (a).) "If the judgment is reversed, vacated, or otherwise set aside, the judgment debtor may recover from the judgment creditor the proceeds of a sale pursuant to the judgment with interest at the rate on money judgments to the extent the proceeds were applied to the satisfaction of the judgment." (§ 701.680, subd. (b).) In *Arrow Sand*, *supra*, our Supreme Court observed that with the enactment of section 701.680, "it is apparent that the Legislature has determined that judicial sales of real property may not be set aside on the basis that the underlying judgment ordering the sale has been reversed." (*Arrow Sand*, at p. 890.) The defendant's interest in the property is protected before the sale, by the statutory provisions permitting a stay on appeal. (*Id*. at p. 891; see also *First Federal Bank of California v. Fegen* (2005) 131 Cal.App.4th 798 (*First Federal Bank*) [dismissing appeal from order for sale of defendant's dwelling to enforce money judgment as moot where defendant did not post requisite undertaking to stay sale].)

The only exception to the general rule that execution sales are absolute and may not be set aside is if the sale was "improper because of irregularities in the proceedings, because the property sold was not subject to execution, or for any other reason." (§ 701.680, subd. (c).) Where such an exception applies and the judgment creditor was the purchaser at the sale, the judgment debtor's remedy is to commence an action to set aside the sale within 90 days of the date of the sale. (§ 701.680, subds. (c)(1) & (2).)

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steps in the litigation. (*Steven M. Garber & Associates v. Eskandarian* (2007) 150 Cal.App.4th 813, 823.) This is not necessarily so for postjudgment enforcement proceedings. (See § 680.250 [making no distinction between defaulting and contesting judgment debtors]; *Walton v. Mueller* (2009) 180 Cal.App.4th 161, 164, 174 [defaulting judgment debtor may move for order compelling entry of satisfaction of judgment under § 724.050].)

First Federal Bank, supra, 131 Cal.App.4th 798, provides a good example of the statutory mechanism. There, the court dismissed as moot an appeal from an order for sale of real property to enforce a money judgment. After obtaining a money judgment against the defendant, the plaintiff bank perfected a lien on all real property owned by the defendant, including his dwelling. The bank obtained an order for sale of the dwelling and was the successful bidder at the sale. The defendant appealed from the order for sale. (*Id*. at p. 800.) The appellate court held that, since the defendant did not file an action pursuant to subdivision (c) of section 701.680 to challenge any purported irregularities in the proceedings, under subdivision (a) of that section the sale was absolute and could not be set aside for any reason. (*First Federal Bank*, at p. 801.) That the bank was the purchaser at the sale was immaterial because section 701.680 "anticipates that the judgment creditor will be the successful bidder, and provides a remedy to a judgment debtor who seeks to challenge the sale . . . ." (*First Federal Bank*, at p. 801.)

Here, the Lathens directly challenge the sheriff's sale on the grounds that (1) they filed related case No. BC375880 within 90 days of the date of the sale, which brought them within the subdivision (c)(1) of section 701.680 exception and (2) there were irregularities in the proceedings. First of all, case No. BC375880 is not before us. What happened in that case, which the Lathens dismissed with prejudice, is separate from the present action and is irrelevant to our consideration of the present appeal. That the cases were deemed related – they were not consolidated – does not permit us to adjudicate matters arising in the other action.

Nor do we see any irregularities in the proceedings that would support setting aside the sheriff's sale. The fact that the judgment was reduced from $407,423.58 to $87,423.58 was not an irregularity in the proceedings that would bring into doubt the validity of the sheriff's sale. From the record before us, the sheriff's sale was lawful; nothing suggests the property was exempt from execution, for example.

B. There Was No Error in Not Resolving the Homestead Exemption and the Difference Between the Reduced Default Judgment and the Sale Price of the Property in the Judgment

The Lathens also argue that the sale proceeds should have been distributed differently. Specifically, they complain that as a result of the reduction in the default judgment, they were entitled to the difference between the reduced judgment and the sale price (see § 701.810, subd. (h)) and also that they were entitled to the $75,000 homestead exemption. But the issue of whether or not the Lathens are entitled to these sums has not yet been perfected for appeal. Although the trial court appears to have the authority to entertain a motion for postjudgment restitutionary relief (see, e.g., *Rogers v. Bill & Vince's, Inc.* (1963) 219 Cal.App.2d 322; see also § 701.680, subd. (b); cf. *Warton v. Mueller*, *supra*, 180 Cal.App.4th at pp. 164, 171), the Lathens have not taken the appropriate steps to obtain such postjudgment relief in this action. Nor have they pursued to a conclusion on the merits a separate action in which the trial court could address these issues. The Lathens raised the distribution of the sale proceeds point in their "objections" to the proposed judgment. Those objections were not the appropriate vehicle to put the issue before the trial court. Obviously, a trial court in deciding the form of a judgment could not decide a postjudgment allocation of execution proceeds.

The Lathens also contend the trial court erred in not resolving as part of the judgment the $75,000 homestead exemption check. At the December 4 hearing, the Lathens asked the trial court to order Daniel to return the check to the Lathens. There ensued the following colloquy: "THE COURT: . . . Your client ought to give that check to the [Lathens]. [¶] [DANIEL'S COUNSEL]: I would absolutely suggest that. I meant to talk to him about that before today – [¶] THE COURT: That much seems clear. You don't need a court order for [*sic*] me to do that. [¶] [LATHENS' COUNSEL]: Your Honor, he is not going to do that. He is not going to do that." This colloquy did not adequately present the issue to the trial court in a postjudgment proceeding, nor did it preserve the point sufficiently for appellate review.

Our conclusion that the trial court was correct in not resolving *in the judgment* matters such as distribution of execution proceeds and the homestead exemption which by their nature are *postjudgment* issues, does not mean the trial court is without power to address those issues. There are several statutes that authorize courts to issue orders relating to postjudgment matters that deal with some of the issues raised here by the parties. (E.g., §§ 701.830 [resolution of conflicting claims to proceeds of sale], 704.710 et seq. [homestead exemption and sale of homestead property].) Those are matters properly heard in the trial court, not for the first time on appeal. Nor do we address whether law of the case or res judicata/collateral estoppel principles – either arising out of this case or the related litigation between the parties – affect a resolution of claims to the sale proceeds or the homestead. Those issues are also more properly addressed in the trial court.

C. The Unlawful Detainer Action

Lathen contends the unlawful detainer action, case No. 10-U-06173, should have been stayed in the interests of justice. He states that on June 7, 2010, the trial court denied his request to stay the unlawful detainer action and instead issued an order and judgment of possession. On June 29, 2010, Lathen says, he sold the property to a third party for $492,000.

To appeal from a superior court judgment or appealable order, an appellant must file and serve a notice of appeal that identifies the particular judgment or order appealed from. (Cal. Rules of Court, rule 8.100(a)(1) & (2).) The notice of appeal filed in this case states only that Lathen is appealing from the judgment entered on November 16, 2009, and the order entered on December 4, 2009, both in case No. BC337962. It does not refer to the June 7, 2010 order denying his request to stay case No. 10-U-06173 and Lathen has not attempted to consolidate an appeal from that order with this appeal. Accordingly, we do not consider that order. (See *Kronsberg v. Milton J. Wershow Co.* (1965) 238 Cal.App.2d 170, 171-172 [notice of appeal must specify judgment or order appealed from].)

DISPOSITION

The judgment is affirmed. Daniel shall recover his costs on appeal.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.